

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of)
Sections 3(n) and 332 of)
the Communications Act)
)
Regulatory Treatment)
of Mobile Services)

GN Docket No. 93-252

To: The Commission

RECEIVED
NOV - 8 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.**

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.¹

1. The Industrial Telecommunications Association, formerly the Special Industrial Radio Service Association, Inc., is a non-profit association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 800/900 MHz frequency "pools". ITA also coordinates channels from the general access pool for those entities (a) eligible to become Industrial/Land Transportation licensees, (b) wishing to expand trunked systems, or (c) consolidating

¹ Notice of Proposed Rule Making (FCC 93-454), GN Docket No. 93-252, adopted September 23, 1993, released October 8, 1993, (hereinafter "Notice").

No. of Copies rec'd
List ABCDE

058

conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency "pools".

2. ITA enjoys the support of a membership that includes more than 9,000 licensed two-way land mobile radio communications users and the following trade associations:

- Alliance of Motion Picture and Television Producers
- American Mining Congress
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Aggregates Association
- National Agricultural Aviation Association
- National Food Processors Association
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

3. The Commission's Notice raises a number of important issues relating to the statutory definitions of "commercial mobile service" and "private mobile service". The Notice identifies the essential elements of a commercial mobile service as: (1) service provided for profit, (2) on an interconnected basis, (3) to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

4. The Commission notes in its proposal that the legislation expressly provides that the term "private mobile service" encompasses mobile services that either (1) do not come within the

above-stated definition of commercial mobile service, or (2) are not the "functional equivalent" of a commercial mobile service.

5. As the Commission proceeds to develop rules in this proceeding reflecting the Congressional intent, it must remain sensitive to the creative tension underlying the statutory definitions of "commercial mobile service" and "private mobile service". It is not sufficient for the Commission merely to examine the elements of a commercial mobile service and identify the mobile services having those elements. A faithful reading of the Congressional intent requires that the Commission also examine the elements of a private radio service and ascertain in which mobile services those elements are present.

6. As noted above, under the statutory definition of a private radio service, the Commission is compelled to treat those services which are not functionally equivalent to a commercial mobile service as a private radio service. ITA believes that the vast majority of existing private radio services are not functionally equivalent to a commercial mobile service.

7. In ITA's view, one of the essential keys to understanding the Congressional intent regarding regulatory parity lies in Congress's emphasis, in the new Section 332(c)(1)(C), on ensuring that "competitive market conditions" prevail in the commercial mobile services. In Section 332(c)(1)(C), Congress permits the Commission to exempt certain commercial mobile service providers from selected provisions of Title II of the Act in cases where

doing so would enhance "competition among providers of commercial mobile services".

8. The Congressional emphasis on ensuring competitive market conditions suggests that Congress could not have intended the new legislation to alter or affect the regulatory status of private radio services that are not competitive with existing common carrier services. ITA believes that the effort to give meaning to the Congressional definition of "private mobile service" must be viewed in the context of Congress's concern for ensuring competitive market conditions.

9. In this regard, ITA believes that the regulatory classification issues presented in this proceeding should be approached from the following analytical framework: (1) to ensure fidelity to the Congressional intent, mobile services that are not the functional equivalent of a commercial mobile service must be classified as private radio services; (2) when assessing which mobile services are not functionally equivalent to a commercial mobile service, the Commission must factor in the Congressional emphasis on ensuring competitive market conditions; (3) those mobile services which are not capable of competing on an effective basis with common carriers and those mobile services which, as a practical matter, do not compete effectively with common carriers cannot be considered functionally equivalent to a commercial mobile service; and (4) in assessing whether private mobile services are capable of competing effectively with common carriers, factors such as the size of a radio system, the scope and nature of the services

offered, the geographic area of operation, the number of mobile units served, and the different classes of subscribers served must be considered.

10. Viewed from this analytical framework, ITA finds that the designation of "private mobile service" remains applicable to the vast majority of radio systems now licensed in the Private Land Mobile Radio Services. The definition of "private mobile service" would certainly encompass all of the traditional licensee operated two-way internal use radio systems. ITA also believes that traditional two-way cooperatively shared systems are shared on a for-profit or non-profit basis. These cooperative systems, as customarily structured, provide service to limited classes of eligible entities and are not capable of effectively competing with common carrier systems.

11. ITA also believes that the majority of Specialized Mobile Radio ("SMR") systems would continue to be classified as private under the classification model set forth in the legislation. While wide-area "enhanced" SMR systems relying on frequency re-use have received the greatest prominence in the SMR service, these systems do not represent the typical SMR operation. There are an abundance of smaller SMR systems in operation throughout the country that are licensed for a limited number of frequencies and offer service to a specialized class of customers. These systems should continue to be classified as private.

12. ITA believes it would be appropriate for the Commission to take a different approach for those SMR systems that employ a very large number of frequencies and rely on frequency re-use and hand-offs between cells to create a cellular-type service. Unlike other traditional private radio systems, these larger cellular-oriented SMR operations are more nearly capable of effectively competing with common carriers and could be viewed as the functional equivalent of a commercial mobile service provider. ITA emphasizes, however, that these characteristics do not apply to the vast majority of private radio systems.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc., respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.

By: 

Mark E. Crosby
President & Managing Director

Prepared by:

Frederick J. Day, Esq.
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720
(703) 528-5115

Date: November 8, 1993